

REMARKS

Claims 42, 43, 61, 62, 67, 72-80, 83, 84 and 87-89 and new claims 122-126 are presented for reconsideration by the Examiner. Some of the claims have been amended herein to correct grammatical errors or to further clarify the applicants' invention. Applicants hereby declare that the amendments made herein are not specifically made for the purpose of patentability and are made for other purposes, such as clarification, and that no such changes shall be construed as limiting the scope of the claims or the application of the Doctrine of Equivalents.

I. EXAMINER INTERVIEW WAS HELD

A telephone interview was held with the Examiner on January 15, 2008. The Examiner's remarks were helpful in assisting applicants' counsel in focusing on elements the Examiner considers most promising. A report of the substance of the interview is contained in the remarks below.

The Applicants and the Examiner discussed the pending claims in relation to West, Jr. et al. (U.S. Patent No. 5,964,764) that was cited during prosecution and Jarvinen (U.S. Patent No. 6,562,071), which the Examiner intimated that he would make of record in the present application. While no specific agreement was reached as to allowable claim language, the Applicants and Examiner

discussed the general differences between the present invention and the devices disclosed in West, Jr. et al. and Jarvinen.

Applicants appreciate the comments in the Office Action, and the additional comments shared in the Examiner Interview. Because of the detail and clarity the Examiner has exhibited in the Office Action, applicants were able to appreciate and understand fully the reasons and grounds for the rejections.

II. OBJECTIONS OF CLAIMS ARE TREATED

Regarding the objection of claim 74, the objection raised is believed to be overcome by the amendment to claim 74 made herein.

III. REJECTIONS OF CLAIMS UNDER 35 U.S.C. §§ 102 and 103 ARE TREATED

Claim 42 was rejected under 35 U.S.C. § 102(e) as being anticipated by West, Jr. et al. The applicants assert that claim 42, as amended herein, is not anticipated by West, Jr. et al. in that West, Jr. et al. fails to teach or suggest all of the limitations of amended claim 42. In particular, amended claim 42 requires that the shaft not be "locked to the bone" and that the shaft "remain[] moveable with respect to the securing means." This claimed feature is a significant improvement over West, Jr. et al. In particular, this claimed feature allows a surgeon to easily adjust the tension in the implant since the shaft is not locked to

the bone and remains moveable with respect to the securing means. The alleged shaft, i.e., sheath member (12), as taught by West, Jr. et al., on the other hand, locks directly to the bone when the alleged securing means, i.e., pin member (24), is inserted into the central recess (22). Once the pin member (24) had been inserted into the central recess (22), the sheath member (12) is locked to the bone, and the pin member (24) and the sheath member (12) are fixed with respect to each other.

Claim 72 was rejected under 35 U.S.C. § 102(e) as being anticipated by West, Jr. et al. The applicants assert that claim 72 is not anticipated by West, Jr. et al. in that it fails to teach or suggest all of the limitations of claim 72. In particular, claim 72 requires that the shaft be inserted into the securing means. The alleged shaft, i.e., sheath member (12), as taught by West, Jr. et al., on the other hand, is not inserted into the alleged securing means, i.e., pin member (24). Instead the pin member (24) is inserted into the central recess (22) formed in the sheath member (12) to thereby deploy the prongs (20) of the sheath member (12) outwardly.

Further, step (g) of claim 72 requires "inserting the shaft further into the securing means until the implant is subjected to an increased tension, and locking the shaft with the locking means to thereby maintain said increased tension." (Emphasis added). West, Jr. et al. does not teach or suggest this claimed feature,

and it is noted that step (g) is a step that requires further insertion in addition to the insertion of step (f), as opposed to the prior art which teaches a single-step locking procedure that structurally teaches away from a multi-step inserting procedure. In particular, the interaction between the sheath member (12) and the pin member (24) of West, Jr. et al. has no bearing on subjecting the implant to an increased tension. Again, the purpose of the pin member (24) is to deploy the prongs (20) of the sheath member (12).

Applicants submit that the features of new claims 121-126 are not taught or suggested by West, Jr. et al. and, therefore, these claims are allowable.

IV. SEPARATE PATENTABILITY OF DEPENDENT CLAIMS EXPLAINED

Several dependant claims are also believed to be allowable on their own merits and independent of the allowability of their base claims, as explained in more detail below.

First, several of the rejected claims, namely claims 61, 62, 79, 80, 83, and 84, specify the material from which the claimed inventions may be formed. These claims were rejected by the Patent Examiner on the broad assertion that "it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice." However, the applicants assert that

modifying the West, Jr. et al. device to include any of the claimed materials would have likely rendered the West, Jr. et al. device non-functional. In particular, the prongs (20) of the sheath member (12) of the West, Jr. et al. device are designed to expand outwardly upon insertion of the cam member 26. West, Jr. et al. teaches that the sheath member (12) is preferably made from a resilient material that allows sheath member 12 "to be sufficiently flexible so that it can be expanded" Col. 10, lines 16-22. The use of any of the claimed materials would likely remove any of the desired resiliency of the prongs (20) thereby making the West, Jr. et al. non-functional for its intended purpose.

Further, West, Jr. et al. actually teaches away from using any of the claimed materials since the West, Jr. et al. anchoring device is designed to be absorbed into the body after a certain period of time. In particular, West, Jr. et al. clearly states:

The anchor devices manufactured according to the invention preferably comprise a bioabsorbable material, which can be absorbed over time and replaced with living tissue. The sheath member, cam member and sutures may all be advantageously made of a bioabsorbable material. An example of a preferred bioabsorbable material that could be used to manufacture the anchor devices of the present invention is a poly-L-lactic acid polymer, also known as "PLLA". Other bioabsorbable materials known in the art are described in detail in U.S. Pat. No. 4,643,734 to Lin. For purposes of disclosing bioabsorbable materials, the foregoing patent is incorporated herein by specific reference.

Col. 15, lines 52-64 (emphasis added). Thus, the use of any of the claimed materials is not obvious because (1) the claimed materials

of the present invention are too rigid for use with the West, Jr. et al. device; and (2) none of the claimed materials of the present invention are bioabsorbable materials.

In regards to claim 75, West, Jr. et al. fails to teach or suggest that the "locking means" comprises a series of slanted ridges formed along a long axis of the shaft. The series of slanted ridges allows for stepwise adjustment of the tension of the implant or ligament.

Likewise, in regards to claims 76-78, the applicants submit that none of the claimed features of these are taught or suggested by West, Jr. et al. In particular, these claims all recite a "push nut." The only alleged structure asserted by the Patent Examiner corresponding to a "push nut" is the pin member (24) as shown in FIG. 1 of West, Jr. et al. It is unclear to applicants how the pin member (24) constitutes a push nut with one or more flanges surrounding a central hole. Further clarification of Patent Examiner's reasoning on this point is hereby respectfully requested.

In regard to new dependent claim 124, the applicants submit that a shaft characterized by the absence of any bone engagement structures is not taught by West, Jr. et al.

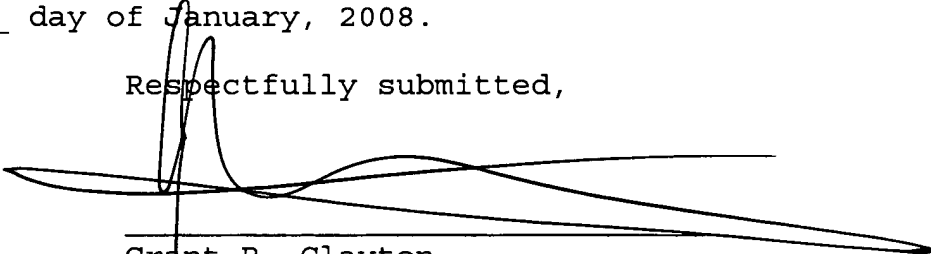
V. CONCLUSION AND AUTHORIZATION OF DEPOSIT ACCOUNT

In view of the foregoing, applicants believe that claims 42, 43, 61, 62, 67, 72-80, 83, 84, 87-89, 122-126 are all allowable and the same is respectfully requested. If any impediment to the allowance of these claims remains after entry of this Amendment, and such impediment could be alleviated during a telephone interview, the Examiner is invited to initiate the same.

The Commissioner is hereby authorized to charge any additional fee or to credit any overpayment in connection with this Amendment to Deposit Account No. 50-0836.

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Respectfully submitted,



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